

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF SHOW LOW

THIS AGREEMENT is entered into this date July 22, 2005, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and CITY OF SHOW LOW, acting by and through its MAYOR AND CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this Agreement and has delegated to the undersigned, the authority to execute this Agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes Section 9-240 and 11-952 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. The State, at the request of the City, incident to the State's reconstruction of the Show Low Creek Bridge #383, herein referred to as "the State's Bridge Project", the State and the City mutually agree for the State to incorporate the design and administer the construction of the City's improvements to the Show Low Creek Channel, herein referred to as "the City's Channel Improvements", collectively hereinafter referred to as "the Project".

4. No later than August 1, 2005, the City will be responsible for depositing funds with the State, in the amount of \$170,000.00, for the estimated design, environmental clearances, easements and rights-of-way acquisition costs, associated with the City's Channel Improvements Project. Prior to the State advertising the Project for bids, the City will deposit with the State, an additional \$830,000.00 for the estimated environmental mitigation, any other clearances or permits, construction, construction engineering and administration costs for the City's portion of the Project, bringing the City's total estimated costs for said Project improvements, to \$1,000,000.00, as described herein. The parties agree the State will be the lead agency for the Project and on behalf of the City, as its agent, will acquire rights of way and environmental clearances, in the name of the City for the Channel Improvements Project. The City will accept ownership jurisdiction, and upon completion of construction, provide perpetual maintenance *within* the City's rights of way, all at the City's expense.

NO. 27634
Filed with the Secretary of State
Date Filed: 7/22/05

Janice K. Shawer
Secretary of State

By: [Signature]

5. The parties herein agree to and acknowledge the following conditions: a) The estimated monetary amounts referenced in this Agreement are subject to change and can change substantially before completion of the Project; b) The parties shall perform their responsibilities consistent with this Agreement; and c) Any change or modification to the Project will only occur with the mutual written consent of the parties.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall:

a. Upon execution of this Agreement and on behalf of the City, prepare design plans, specifications and other such documents and services required for construction bidding and construction of the City's Channel Improvements Project and submit said documents to the City for review and approval.

b. Upon receipt of concurrence by the City, incorporate said plans for construction of the City's Channel Improvements with the State's plans for reconstruction of its Bridge Project.

c. Upon execution of this Agreement and no earlier than July 1, 2005, invoice the City \$170,000.00 for the estimated design, environmental clearances, easements and rights of way acquisition costs of the City's Channel Improvements. Prior to advertising for bids, invoice the City \$830,000.00 for the estimated costs associated with the environmental mitigation, construction, construction engineering and administration of the City's Channel Improvements, bringing the estimated total amount to \$1,000,000.00, for the City's Channel Improvements Project.

d. Upon execution of this Agreement, be the City's authorized agent for the City's Channel Improvements Project. On behalf of the City, acquire the environmental clearances, easement and rights of way in the City's name, and design and construct the Project. All design and construction improvements associated with the City's Channel Improvements, shall be subject to prior approval of the City.

e. Call for bids as one Project and award one or more construction contract(s) for the Project. Administer same and make all payments to the contractor(s). Confer and receive approval from the City for any change orders required for construction of the City's Channel Improvements Project. Be responsible for contractor's claims for extra compensation for delays, or whatever reason, attributable to the State.

f. Upon completion of the Channel Improvements Project, invoice or reimburse the City any difference between the amount paid by the City and the actual costs for the design, environmental clearance, easements, rights of way, environmental mitigations, construction, construction engineering and administration of the City's Channel Improvements Project.

g. Upon completion of construction of the Project by the State, be responsible for the costs and maintenance of the reconstruction of the Show Low Creek Bridge (#383) and *only* maintain the portion of the Channel Improvements *within* the State's rights of way, as shown on Exhibit "A", attached hereto and made a part hereof.

h. Not be obligated to incur expenditures for the Channel Improvements should unforeseen conditions or circumstances cause a change in the extent of the Scope of Work called for in this Agreement. Such change in the Scope of Work shall be subject to prior approval of the City.

2. The City shall:

a. Upon execution of this Agreement, designate the State as the City's authorized agent to prepare design plans, specifications and other such documents and services required for construction bidding and construction of the City's Channel Improvements Project. Review and approve said documents and provide comments to the State as appropriate.

b. Authorize the State to acquire, on the City's behalf, the necessary easement and rights of way, in the name of the City for the City's Channel Improvements Project. All design and construction of the City's Channel Improvements shall be subject to the prior approval of the City.

c. Upon execution of this Agreement, receipt of an invoice from the State, and no later than August 1, 2005, deposit with the State \$170,000.00, the estimated costs of design, environmental clearances, easements and rights of way for the City's Channel Improvements Project. Upon receipt of an invoice, and prior to the State's advertisement for bids, deposit with the State, an additional amount of \$830,000.00, the estimated costs of environmental mitigations, construction, construction engineering and administration, for City's Channel Improvements Project, bringing the City's estimated total amount to \$1,000,000.00. The actual cost of the City's Channel Improvements portion of the Project shall be determined upon completion of such construction.

d. Be responsible for the design, environmental clearances, environmental mitigation compliance, any other clearances or permits, easements, rights-of-way acquisition costs, construction, and construction engineering and administration costs of the City's Channel Improvements Project at an estimated total cost of \$1,000,000.00.

e. Be responsible for any City approved additional Project costs to the Channel Improvements Project due to scope changes to the Scope of Work agreed upon at the 30% completion stage. Review and approve any change orders required for construction of the Channel Improvements. Be responsible for contractor's claims for extra compensation for delays, or whatever reason, attributable to the City.

f. Upon completion of the Channel Improvements portion of the Project, reimburse the State, if the cost of the City's portion of the Project exceeds the amount of the City's remittance, within thirty (30) days after receipt of an invoice, for the actual costs for easements and rights-of-way acquisitions including the acquisition Agent's time, and any other clearances or permits enabling the State, on the City's behalf, and for the design, construction, construction engineering and administration costs for the Channel Improvements portion of the Project.

g. Upon completion of the Project by the State, accept ownership jurisdiction and maintenance responsibility for the Show Low Creek drainage easement and Channel Improvements portion of the Project *within* the City's right-of-way as shown on Exhibit "A", attached hereto and made a part hereof.

h. Continue to be responsible for updating the FEMA floodplain maps through a Conditional Letter of Map Revision (CLMR), a Letter of Map Revision (LMR), and floodplain management.

i. Be responsible for all utility relocation that is currently existing on the Show Low Creek Bridge (#383) prior to bid and shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the Project area, and hereby certifies that all obstructions and encroachments have been or will be removed from there prior to the start of the Project construction.

j. Be responsible, should the City withdraw its proposed plans for whatever reason, for all costs incurred by the State for the Channel Improvements portion of the Project, up to the time of withdrawal, unless the reason for the City's cancellation is due to the State's failure to comply with its obligations herein.

k. Discuss with the State and agree upon a resolution, if at all possible, should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent of the scope of work as agreed to in II 2.e. above. Such changes require the prior written approval of the State and the City. If unable to resolve such issue, and the City's Channel Improvements portion of the Project continues, the City will be responsible for additional unforeseen costs.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this Agreement for the Channel Improvements portion of the Project or for any resulting construction project. The City will continue to be responsible for updating the FEMA floodplain maps through a Conditional Letter of Map Revision (CLMR), a Letter of Map Revision (LMR), and floodplain management. The City assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims of the Channel Improvements portion of the Project. It is understood and agreed that any damages arising from carrying out, in any respect, the Channel Improvements portion of the Project as defined in this Agreement or any modification thereof, shall be solely the liability of the City and that the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all costs and/or damage incurred by any of the above and from any other damage to any person or property whatsoever which is caused by any activity, condition, misrepresentation, directives, instructions or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees of the City, and any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include, in the event of any action, court costs, and expenses of litigation or attorneys' fees.

2. The City assumes no financial obligation or liability under this Agreement for the State's Bridge Project or for any resulting construction project. The State assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, and the construction of the improvements contemplated, cost over-runs and construction claims of the Bridge Project. It is understood and agreed that any damages arising from carrying out, in any respect, the State's Bridge Project as defined in this Agreement or any modification thereof, shall be solely the liability of the State and that the State hereby agrees to save and hold harmless and indemnify from loss the City, any of its departments, agencies, officers or employees from any and all costs and/or damage incurred by any of the above and from any other damage to any person or property whatsoever which is caused by any activity, condition, misrepresentation, directives, instructions or event arising out of the performance or nonperformance of any provisions of this Agreement by the City, any of its departments, agencies, officers and employees of the City, and any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the City, any of its departments, agencies, officers or employees shall include, in the event of any action, court costs, and expenses of litigation or attorneys' fees.

3. This Agreement shall remain in force and effect until completion of the Project and any payments and/or reimbursements; provided, however, that this Agreement, except any provisions herein for maintenance, which shall be perpetual, unless assumed by another governmental entity, may be canceled with thirty (30) days written notice to the other party prior to advertisement of the Project.

4. It is understood and agreed to that if the City cancels this Agreement, the City is responsible for all Project costs of the Channel Improvements up to the time of cancellation.

5. This Agreement shall become effective upon filing with the Secretary of State.

6. This Agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

7. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

8. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".

9. Non-Availability of Construction Funds: Every payment obligation of the State and the City under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State and the City at the end of the period for which the funds are available. No liability shall accrue to the State and the City in the event this provision is exercised, and neither party shall be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

10. The City is responsible for all costs associated with design, environmental clearances, easements, rights of way, environmental mitigations, construction, construction engineering and administration for City's Channel Improvements Project.

11. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

12. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

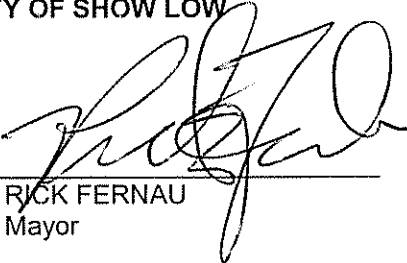
Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, AZ 85007
(602) 712-7525

City of Show Low
Attn: City Manager
200 W. Cooley
Show Low, AZ 85901
(928) 532-4000

13. Pursuant to Arizona Revised Statutes Section 11-952(D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF SHOW LOW

By 

RICK FERNAU
Mayor

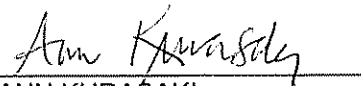
STATE OF ARIZONA

Department of Transportation

By 

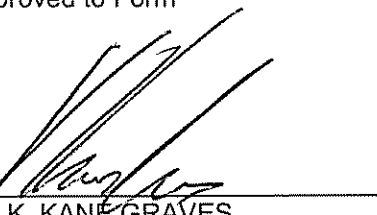
SAM MAROUFKHANI P.E.
Acting State Engineer

ATTEST

By 

ANN KURASAKI
Clerk

Approved to Form

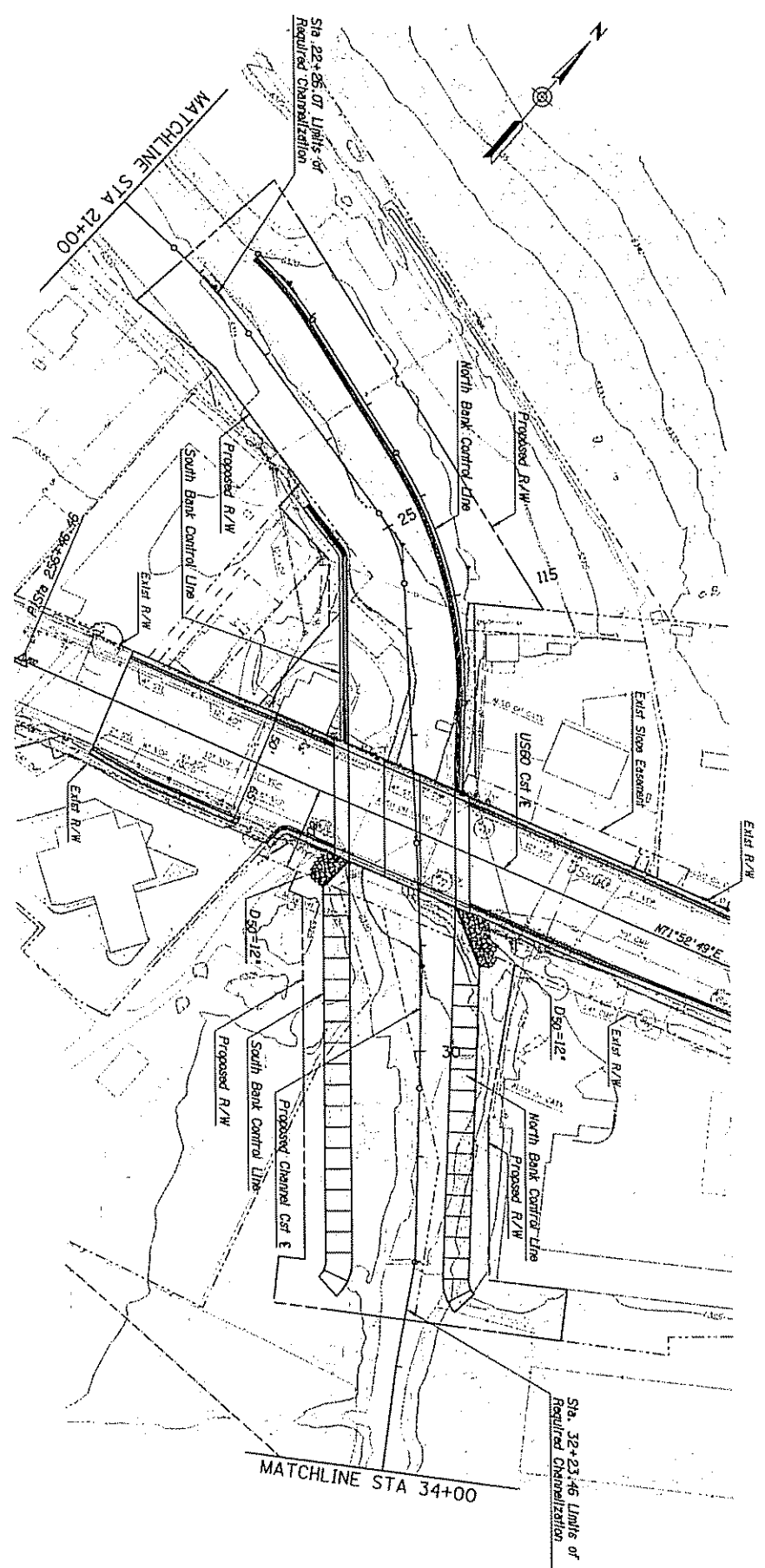
By 

K. KANE GRAVES
City Attorney

Approved as to Content

By 

MICHAEL D. MAAS
City Manager



PROJECT NO.	060-E10071	SHEET NO.	1A
DATE	06/01/07	SCALE	AS SHOWN
060 MA 341			

US 60		SHOW LOW CREEK BRIDGE #00383		PRELIMINARY	
TRACS NO. H4663 DIC		060-E10071		Stage II	
SHOW LOW CREEK CHANNELIZATION		LIMITS STA 21+00 TO STA 34+00		NOT FOR CONSTRUCTION OR RECORDING	
AERONAUTICAL DEPARTMENT OF TRANSPORTATION		INTERNAL INVESTIGATION DIVISION		ROADWAY DESIGN SERVICES	
DATE		BY		CHECKED	
06/01/07		[Signature]		[Signature]	

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APPROVAL OF THE CITY OF SHOW LOW

I have reviewed the above referenced intergovernmental Agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF SHOW LOW, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 22nd day of June, 2005.



City Attorney

CITY OF SHOW LOW RESOLUTION NO. R2005-33

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF
SHOW LOW, ARIZONA APPROVING AN INTERGOVERNMENTAL
AGREEMENT BETWEEN THE CITY OF SHOW LOW AND THE
STATE OF ARIZONA, DEPARTMENT OF TRANSPORTATION, FOR
THE CONSTRUCTION OF THE SHOW LOW CREEK BRIDGE AND
CHANNEL IMPROVEMENTS

RECITALS:

WHEREAS, the State of Arizona, Department of Transportation, is empowered by A.R.S. §§ 28-401 and 11-951 through 11-954 to enter into this agreement with the City of Show Low; and

WHEREAS, the City of Show Low is empowered by A.R.S. §§ 9-240 and 11-951 through 11-954 to enter into this agreement with the State of Arizona; and

WHEREAS, the State and the City, incident to the State's future reconstruction of the Show Low Creek Bridge, mutually desire to cooperate for the construction of the City's Show Low Creek Channel Improvements project, said project to be administered by the State in conjunction with the reconstruction of the Show Low Creek Bridge.

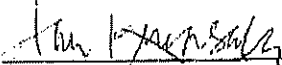
ENACTMENTS:

NOW, THEREFORE, BE IT RESOLVED that the Mayor and Council of the City of Show Low, Arizona, hereby approve an Intergovernmental Agreement between the State of Arizona and the City of Show Low for the purpose of the State's administration of the construction of the City's Show Low Creek Channel Improvements project.

PASSED AND ADOPTED this 21st day of June, 2005, by the Mayor and Council of the City of Show Low, Arizona.


Rick Fernau, Mayor

ATTEST:



Ann Kurasaki, City Clerk

APPROVED AS TO CONTENT:



Michael D. Maag, City Manager

APPROVED AS TO FORM:



K. Kane Graves, City Attorney



TERRY GODDARD
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TRANSPORTATION SECTION
WRITER'S DIRECT NO: 602.542.8837

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR04-1684-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

Date: 18 July 2005

Terry Goddard
ATTORNEY GENERAL

A handwritten signature in black ink, reading "James R. Redpath", is written over a horizontal line.

James R. Redpath
Assistant Attorney General
Transportation Section

JRR:djd:780214